

REMARKS

I. Claim Status

Each and every independent claim includes a step of treating damaged tissue with a “wound healing agent.” Such support is found on page 13 of the specification.

Claims 9-15 and 17-33 are stand rejected under §112, first paragraph and §103.

II. Telephonic Interview

The Applicants’ attorney would like to thank Examiner Pryor for courteously conducting a telephonic interview on January 23, 2007. During the interview, all the present rejections were discussed. It was specifically noted that nearly 3 years ago, in a March 23, 2004 Office Action, original claims 9-12 were deemed allowable. All currently pending claims fall within the scope of original (and allowable) claims 9-12. Therefore, for almost 3 years Applicants have been merely trying to patent allowable subject matter.

A. Rejections under §112, first paragraph

Applicants’ Attorney and Examiner discussed 2 concerns that the Examiner had under Section 112.

First, the Examiner was concerned about the terminology “wound healing agent” and its support in the Specification. Applicants’ Attorney pointed to 2 places in the original application to support the term “wound healing agent.” First, this term is explicitly used in original (and allowable) claim 12. Second, on page 13, wherein the wound healing agents are specifically delineated, these agents are used in combination with gaseous nitric oxide “to further enhance the healing process.” After Applicants’ Attorney pointed out this support, the Examiner agreed that there was no support or new matter problem with the phrase “wound healing agent.”

Second, the Examiner was concerned that “Applicant lists numerous agents without a showing of how nitrous [sic] oxide compliments the agents when both are applied to wounds.” Office Action, p. 2. Applicants’ Attorney explained that gaseous nitric oxide is shown by the Specification to be useful in treating wounds. Additionally, the Specification (page 13) shows that wound healing agents are useful in treating wounds. One of skill in the art knows that the wound healing agents described on page 13 are traditional agents used “to enhance the healing process.” When used in combination, two agents useful in treating wounds (gaseous nitric oxide and wound healing agents) will show complimentary effects when applied to wounds. There is much support in the specification for combining different known therapies with gaseous nitric oxide to give complimentary results. See the original (and allowable) claims 9-12 and page 13.

B. Rejections under §103

The two § 103 rejections were also discussed. In the interview, Applicants’ Attorney explained that nitrogen gas was not a “wound healing agent” because if applied by itself, it could not treat a wound or “enhance the wound healing process.” All of the wound healing agents used in the claims and in the specification would be considered a “wound healing agent” because each could be applied to a wound alone, without the need for any additional agent. Thus, the term “wound healing agent” is used to denote all agents that could treat a wound or “enhance the wound healing process.” Thus, the § 103 rejections should be removed because the references alone or in combination do not teach the claimed invention which include steps of treating damaged tissue with a “wound healing agent” and gaseous nitric oxide.

C. Rejection of new claims under §112, first paragraph

Finally, the rejection of new claims 27-33 under §112, first paragraph were discussed by Examiner and Applicants’ Attorney. It was agreed that the rejection was really a repeat of

Examiner's concern about the terminology "wound healing agent" and its support in the Specification. Applicants' Attorney pointed to 2 places in the original application to support the term "wound healing agent." First, this term is explicitly used in original (and allowable) claim 12. Second, on page 13, wherein the wound healing agents are specifically delineated, these agents are used in combination with gaseous nitric oxide "to further enhance the healing process." After Applicants' Attorney pointed out this support, the Examiner agreed that there was no support or new matter problem with the phrase "wound healing agent."

III. Supplemental IDS

The Stenzler Patent of record was briefly discussed. The Stenzler Patent is the parent to several patents and patent applications. Thus, attached is a supplemental IDS listing the Stenzler Patent's progeny. It is believed that the present claims are patentable over the Stenzler Patent and its progeny and that there are no double patenting concerns.

IV. Conclusion

Thus, Applicants respectfully submit that the rejections of claims 9-15 and 17-33 be withdrawn and a Notice of Allowance be issued for all pending claims.

If the undersigned can be of any assistance to the Patent Office, a telephone call is respectfully requested. If any fees are required by this filing, the Commissioner is authorized to charge Sidley Austin LLP's Deposit Account # 50-1597.

Respectfully Submitted

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